

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.204 OF 1997
FROM
NOTICE OF MOTION NO.42 OF 1996
IN
SUIT NO.3658 OF 1995

1. Ramavtar Surajmal Modi
an Adult, Indian Inhabitant of
Bombay and residing at Block
No.22, Second Floor, 'A' Wing,
Chinar Building, Rafi Ahmed
Kidwai Road, Wadala,
Bombay 400 031.
 2. Ramavtar Surajmal Modi
an Adult, Indian Inhabitant of
Bombay and Karta of Ramavtar
Surajmal Modi (HUF) and residing
at Block No.22, Second Floor,
'A' Wing, Rafi Ahmed Kidwai
Road, Wadala,
Bombay 400 031.
- Appellants.
(Orig. Defendant Nos.1 & 5)
- Vs.
1. Late Smt. Banarasibai Mulchand Modi
since deceased through her heirs
and legar representatives
 - 1(A) Sou. Shanta Laxmankumar Agarwal,
Aged 50 years, At & Post 46,
Agrasen Nagar, Indore (M. P.).
 - 1(B) Sou. Sharda Premkumar Agarwal
aged 48 years, A/D. Poynad,

Tal. Alibagh, Dist. Raigad.

- 1(C) Sou. Savita Naresh Khemkar
aged 45 years, Center Point,
In front of Municipal Office,
Thane.
- 1(D) Sou. Anita Pravin Satnaliwale
aged 39 years, J.R. Terrace,
In front of St. Xavier School,
Ghod Doud Road, Surat.
- 1(E) Santosh Mulchand Modi
aged 36 years, 704, Sunder Tower,
T.J. Road, Opp. Swan Mill,
Sewree, Mumbai.
- 1(F) Deepak Mulchand Modi
aged 33 years, 704, Suder Tower,
T.J. Road, Opp. Swan Mill,
Sewree, Mumbai.
- 1(G) Ashok Mulchand Modi
aged 41 years, 704, Sunder Tower,
T.J. Road, Opp. Swan Mill,
Sewree, Mumbai.
- 1(H) Sou. Jyoti Arvind Agarwal
aged 33 years, Manish Apartment,
Station Road, Kalyan.
- 1(I) Sou. Priti Devendra Agarwal,
aged 31, Karan Complex, Near
Jog Hospital, Daman.
- 2. Savita, d/o Mulchand Modi
and wife of Narendra Agarwal
an adult, Indian Inhabitant,

residing at 303, Centre Point Building, 'B' Wing, Opp. New Municipal Office, Thane (West).

3. Sitalaprasad Surajmal Modi
an adult, Indian Inhabitant,
residing at Village and Post
Nagothane, Taluka Roha,
Maharashtra.
 4. Smt. Kalawati d/o Surajmal Modi
and wife of Jayprakash Dhandharia,
an adult, Indian Inhabitant,
residing at 4, Dhandharia Bhavan,
Navug Colony, Near V. Shah College,
Ashram Road, Ahmedabad.
 5. Smt. Anita d/o Mulchand Modi
and wife of Pravin Agarwal
an adult, Indian Inhabitant,
residing at Third Floor,
B. Terrace Building Opp.
St. Xavier School, Amar Park
Ghod-Daud Road,
Surat -2.
- ..Respondents.
(Orig. Plaintiff and Defendant
Nos.2 to 4 & 6)

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Shri. H. J. Thakkar, Senior Advocate i/b Shri. R.D. Suvarna for the Appellants.

Shri. A.D. Kango for the Respondents.

CORAM : [R.M.S. KHANDEPARKAR, &](#)
[DR.D.Y.CHANDRACHUD, JJ.](#)

9th January, 2007.

ORAL JUDGMENT (Per DR. D.Y. CHANDRACHUD, J.):

1. This Appeal arises out of an order passed by the Learned Single Judge on 29th November, 1996 in a suit for dissolution and accounts. By the order impugned before this Court the Learned Single Judge has appointed the Court Receiver as Receiver in charge of the assets of the partnership.

2. The primary relief that has been sought in the suit is dissolution and accounts of a partnership constituted under a deed of partnership dated 17th May, 1980. There were five partners under the original deed of partnership. The case of the Plaintiff, the First Respondent before the Court in these proceedings is that the business of the partnership was primarily carried on by the First Defendant, the Appellant before us, who is the brother of her deceased husband. The business of the partnership was according to the Plaintiff being looked after by the First Defendant. The contention of the Plaintiff is that some time in the year 1995 she obtained knowledge of the fact that the First Defendant had

purportedly relied upon a deed of partnership of 1992 under which the original partnership came to be reconstituted by the addition of two partners and by the deletion of three partners who were not parties to the earlier document of 1980. The submission of the Plaintiff is that the document of 1992 was obtained by misrepresentation and fraud and that the signatures of the Plaintiff were obtained on the assurance that the document was not intended to be acted upon. On these averments, the Learned Single Judge was persuaded to accept the Motion for the appointment of a Receiver of the assets of the partnership.

3. The order of the Learned Single Judge has been questioned in these proceedings principally on the basis of the provisions of Section 69(2A) of the Indian Partnership Act, 1932. As amended in relation to the State of Maharashtra sub section (2A) provides that no suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or

any person alleged to have been a partner in the firm, unless the firm is registered and the person suing is shown in the Register of Firms as a partner in the firm. The submission before the Court is that the deed of partnership of 1992 is not registered and therefore no suit for dissolution could be founded on the basis of an unregistered partnership. It was urged before us that the original partnership of 1980 was reconstituted when a fresh partnership was agreed upon between the parties in the year 1992. Consequently inasmuch as a reconstituted partnership amounted to a fresh agreement between the parties, it was urged that the suit for dissolution and accounts must fail in view of the circumstance that the partnership of 1992 has not been registered.

4. Having heard counsel appearing for the Appellant and counsel appearing for the First Respondent, we are of the view that the submission must fail. The principal relief that has been sought in the suit is on the foundation of the deed of partnership dated 17th May, 1980. It is undisputed that the document of 1980 is registered. The contention of the Plaintiff before the Learned Single Judge was

that the document of 1992 is vitiated by misrepresentation and fraud. The case of the Plaintiff is that the affairs of the partnership were entrusted to the First Defendant who is her brother-in-law and that she at all material times proceeded to entrust control by the First Defendant over the business of the partnership. We have noted from the affidavit in reply filed on behalf of the First Defendant that the denial of the aforesaid allegations which are contained in paragraphs 6, 7 and 8 of the plaint is prima facie inadequate. The allegations in the plaint have not squarely been controverted. At this stage it is neither appropriate nor proper for this Court to express any final or conclusive view on whether the allegation of misrepresentation and/or fraud will sustain scrutiny at the trial of the suit. The trial is still to take place. On the basis of the material as it stands before us, we are of the view that a case for the appointment of the Court Receiver as Receiver of the assets of the partnership has been made out. The suit for dissolution is based on the partnership deed of 17th May, 1980. The appointment of a Receiver in such a suit in respect of the assets of the partnership cannot be faulted.

5. Undoubtedly these observations are confined to the disposal of the application for interim relief. Nothing that has been said in this order shall affect the merits of the rival contentions at the trial. Should the Appellant be advised to raise a preliminary objection to the maintainability of the suit, such a course of action is left open to be pursued by the Appellants should they be advised to do so. In pursuance of the order of the Learned Single Judge the Court Receiver has taken charge of the assets in view of the circumstance that no interim stay came to be granted by the Division Bench when the appeal was admitted. The Receiver has consequently continued in charge of the assets for nearly 10 years. Having regard to the circumstances, it will be appropriate if the trial of the suit is expedited. Parties will be at liberty to move the Learned Single Judge for appropriate directions in regard to the expeditious disposal of the suit. The Appeal is accordingly dismissed.

(R.M.S.KHANDEPARKAR,, J.)

(DR.D.Y.CHANDRACHUD, J.)